IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
ARTHUR FRANKLIN TYLER, JR.,	§	CASE NO. 01-80343-SAF-13
DEBTOR.	§	
	§	
ARTHUR FRANKLIN TYLER, JR.,	§	
PLAINTIFF,	§	
	§	
VS.	§	ADVERSARY NO. 02-3530
	§	
TYWELL MANUFACTURING CORP. and JOHNNY CARDWELL,	§	
DEFENDANTS.	§	

MEMORANDUM OPINION AND ORDER

In this adversary proceeding, Arthur Franklin Tyler, Jr., seeks to recover $2,000,000 in damages plus attorney's fees from Tywell Manufacturing Corporation ("Tywell"), for denial of redemption rights, improper retention of collateral, conversion, and fraudulent conveyances. Tywell contends that Tyler has not been damaged. The court conducted a trial on July 1, 2003.

This memorandum opinion contains the court's findings of fact and conclusions of law. Bankruptcy Rule 7052. The adversary proceeding raises core and non-core matters. The parties consent to the entry of a final order on the non-core matters. Consequently, the court has jurisdiction to enter a

final judgment. 28 U.S.C. §§ 157(c)(2) and 1334.

Tywell loaned Tyler $21,000. By a promissory note, Tyler promised to repay the loan by July 7, 2000. To secure the loan, Tyler pledged 390 shares of stock of Tywell that Tyler owned. In the event of default, the note provides "the Tywell Manufacturing Corporation Stock Certificate Number 03 of 390 common stock shares will become property of Tywell Manufacturing Corporation." Tywell is a Texas Corporation.

Tyler did not pay the loan by July 7, 2000. He tendered five checks on July 10, 2000, to pay the loan.

However, Tyler deposited or attempted to deposit at Western Bank and Trust $21,000 into the bank account of Tywell Construction Corporation, a related entity, not Tywell. Both entities maintained bank accounts at Western Bank and Trust. A check in the amount of $14,244.86 was returned for insufficient funds.

On July 12, 2000, John Cardwell, Tywell and Tywell Construction's president, informed Tyler that Tyler had not timely paid the note and that Cardwell was retaining the stock for an extended period.

By letter dated December 6, 2000, Cardwell on behalf of Tywell notified Tyler that Tywell would retain the stock in

satisfaction of the debt pursuant to § 9.505(b)[1] of the Texas Uniform Commercial Code. By letter dated December 21, 2000, Tywell declared that it retained the stock in satisfaction of the debt pursuant to § 9.505(b).

Redemption

Tyler contends that Tywell denied Tyler his redemption rights. Section 9.506 of the Texas Business and Commerce Code provides:

> At any time before the secured party has disposed of collateral or . . .before the obligation has been discharged under Section 9.505(b), the debtor or any other secured party may . . . redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

Tex. Bus. & Com. Code Ann. § 9.506(b) (1991).

Cardwell has not disposed of the stock. Based on the court's memorandum opinion and order entered April 11, 2003, Tywell did not discharge the debt in compliance with § 9.505(b). The opportunity to redeem, therefore, remains.

Tyler did not tender funds sufficient to fulfill the obligation secured by the stock. Tyler promised to pay the

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[1]All citations to Texas statutes are to those in effect in 1999, as set forth in Vernon's Texas Codes Annotated 1991, reflecting the statutory provisions applicable to the instant litigation.

$21,000 loan by July 7, 2000. Tyler was not employed at the time. He did not have sufficient funds to pay the loan. He lacked $7,800 to pay the debt. He attempted to borrow $8,500 from a friend to cover the difference plus interest. On July 7, 2000, a Friday, Tyler testified that he called Cardwell and requested an extension of time to pay the debt. Cardwell denied that Tyler called him. Johnny Beach, Tywell's financial officer, testified that Tyler called him on July 7, 2000, requesting an extension. Beach testified that he told Tyler that he lacked the authority to extend the note. Cardwell would have to grant the extension.

On Monday, July 10, 2000, Tyler deposited funds with the bank, but he erroneously deposited the funds in the Tywell Construction Corporation account, not in the Tywell account. Tyler tendered five checks to Tywell on July 10, 2000, to pay the loan, but a check in the amount of $14,244.86 was returned for insufficient funds.

Cardwell played hardball with Tyler. Tyler had been experiencing personal problems in 2000. Tywell Construction Corporation had terminated his employment before Tyler borrowed the $21,000. Cardwell testified that in July 2000 he was very angry with Tyler. By memo dated July 12, 2000, Cardwell informed Tyler that Tyler had not timely paid the note and that Cardwell was retaining the stock for an extended period, during which time

Cardwell would reevaluate their business relationship and decide what course of action to take.

From July 12, 2000, until the commencement of this adversary proceeding on November 6, 2002, Tyler never demanded the return of the stock and never tendered payment in fulfillment of the obligation. Tyler still has not tendered payment in fulfillment of the obligation.

Tyler testified that he met with Cardwell three times to discuss rectifying their soured business relationship. Tyler envisioned that reconciliation would include the return of the stock. Cardwell testified that Tyler did not meet with him three times to discuss their relationship. Cardwell testified that he had not seen Tyler from the time of his employment termination until the commencement of this litigation.

Conceivably, during the week of July 10, 2000, Tyler could have remedied the erroneous deposit and arranged to have the bad check clear. But Tyler never took those steps. Cardwell could have given Tyler an opportunity to correct the erroneous deposit and pay the debt, but he had no obligation to do so, and, during the week of July 10, 2000, Tyler did not request that Cardwell perform this act. Tyler received Cardwell's July 12, 2000, memo and never took any steps to tender full payment or to demand the opportunity to redeem the stock.

Tyler has not demonstrated an ability to redeem the stock

since the week of July 10, 2000.

Tyler argues that Cardwell's refusal to accept the funds amounted to a denial of Tyler's redemption rights. Tyler further argues that the July 12, 2000, memo amounts to a rejection of any redemption attempt should one be made. The court disagrees. The activities of July 10, 2000, amounted to a failed effort by Tyler to pay the note three days late. It was not a redemption exercise. After the July 12, 2000, memo, Tyler neither demanded the return of the stock nor tendered payment in fulfillment of the debt obligation. Tyler has not established that Tywell denied Tyler his redemption rights under Texas law.

Recovery Under Section 9.507(a)

In a memorandum opinion and order entered April 11, 2003, this court granted partial summary judgment for Tyler declaring that Tywell did not retain the collateral in satisfaction of the debt in compliance with Tex. Bus. & Com. Code Ann. § 9.505(b)(Vernon 1991). As a result, Tyler may seek recovery under § 9.507(a).

> If it is established that the secured party is not proceeding in accordance with the provisions of this subchapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this subchapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten

> per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

Tex. Bus. & Com. Code Ann. § 9.507(a).

Tyler contends that had Tywell provided proper statutory notice, Tyler could have objected to Tywell retaining the collateral, thereby requiring Tywell to dispose of the stock under § 9.504. Tex. Bus. & Com. Code Ann. § 9.505(b). Under § 9.504, Tywell would have been required to sell the stock in a commercially reasonable manner, either by public or private sale. Tyler contends that a sale in a commercially reasonable manner would have resulted in value exceeding the amount of the debt. Tyler seeks to recover that difference as damages under § 9.507(a), as the economic loss sustained. See Barr v. White Oak State Bank, 677 S.W.2d 707, 711 (Tex. App.-Tyler 1984, writ ref'd n.r.e.)(citing Food City, Inc. v. Fleming Cos., Inc., 590 S.W.2d 754, 761 (Tex. Civ. App.-San Antonio 1979, no writ)).

A commercially reasonable sale is a sale so conducted as would have been conducted by an ordinary and prudent businessman operating under the same or similar circumstances. Siboney Corp., Chicago Pneumatic Tool Co., 572 S.W.2d 4, 6 (Tex. Civ. App.-Houston [1st Dist.] 1978, writ ref'd n.r.e.). The fact that a better price could have been obtained by a sale at a different time or in a different method is not in itself sufficient to establish the reasonableness of a sale. Rather, the court

examines whether a secured creditor has otherwise sold in conformity with reasonable commercial practices in similar markets in the type of property involved. The court applies those principals to this case.

Tyler contends that he should realize the benefit of 50% of the value of Tywell if his stock had been sold in a commercially reasonable manner. Tyler has the burden of proof of establishing his damages under § 9.507(a).

Tyler owned 390 shares of Tywell. That constituted 39% of the outstanding shares. Tywell's tax returns report that Tyler and Cardwell each owned 42.5 % of the outstanding stock. While the percentage of ownership of Tywell varied and is disputed, Tyler and Cardwell equally shared Tywell's value. Tyler and Cardwell jointly operated their construction enterprise. Cardwell testified that he and Tyler did not receive regular dividends or other payments by virtue of their ownership of Tywell stock. Rather they derived income through their employment with Tywell or Tywell Construction Corporation. Tyler did not disagree with that testimony. Beach testified that Tyler and Cardwell derived their income through their employment, not by virtue of their stock ownership.

Under these circumstances, a buyer would not acquire a controlling interest in Tywell but would buy into an operation that required employment services to derive income from an

ownership position. While the parties did not present evidence of the type of market for this situation, the court infers that a reasonable commercial market would involve either a person in the construction industry seeking to purchase an ownership interest in an established construction company that would secure income for him or a person seeking to buy the assets of a construction company. The court considers those likely markets in reverse order.

Scott Hakala, a valuation expert with CBIZ Valuation Group, Inc. (formerly Business Valuation Services) of Dallas, testified that Tywell had a net asset value of approximately $1,800,000. At 50% of that value, Tyler's share would have been $981,000. Hakala translated book value into net asset value. Because Tywell is a closely held corporation, Hakala recognized the lack of a ready market for the sale of its stock. So he made a net asset valuation of the corporation, which is effectively a liquidation value. To do so, he made a number of adjustments to the book value as reported on the balance sheet. He made those adjustments to attempt to derive a market value for each asset.

Tywell's primary asset in 2000 was its real estate and building in Forney, Texas. Hakala did not have an appraisal for the real estate. But he apparently assigned a market value of $ 1,000,076 million. Tyler did not present evidence of an appraisal for the real estate. Kaufman County, Texas, valued the

real estate at $469,000 for tax purposes. For the year ending December 31, 1999, Tywell's balance sheet reported the real estate and building at $642,027. For the year ending December 31, 2001, the balance sheet reported the same amount. The record does not contain a Tywell balance sheet for the year ending December 31, 2000, even though the stock was retained in satisfaction of the debt in December 2000. The record does not support the value used by Hakala.

Tywell leased its land, building, and equipment to Tywell Construction Corporation. Tywell Construction actually performed the construction projects. Tywell Construction had a $190,000 rental obligation to Tywell. According to Hakala, Tywell did not report that obligation as an asset on its 2000 balance sheet. Hakala added the obligation to derive at his net asset value. The balance sheet for the year ending December 31, 2001, reports a rent receivable of $158,334. The rental receivable has value.

Tywell also owned twenty-five acres of land for investment purposes. Cardwell had been trying to sell the land for $10,000 an acre, but he had been unable to sell the land at that price. In addition, the land is reportedly in a flood plain. Tywell has been challenging that designation. But, with the challenge pending, there was no market for the land at $10,000 an acre. Hakala used the purchase price of $116,000 for the value of that acreage. The balance sheets for the years ending December 31,

1999, and December 31, 2001, report a value of $116,604.

Tywell paid approximately $700,000 to affiliated companies for an account labeled as marketing and management fees. The affiliated companies supplied labor and other services for the construction projects. These fees paid for those services. The affiliates, in turn, paid Tyler and Cardwell from these fees. Hakala opined that Tywell paid excessive fees to the affiliated companies. He opined that Tywell had been winding down its direct business, becoming an asset holding company. The fees it paid for labor and services should have been reduced. Hakala made that adjustment. While that adjustment may be reasonable for a solvency analysis, it should not be made to determine what a commercially reasonable sale of the assets would have yielded in 2000. Had Tywell sold the stock at a public or private sale at the time, the market would have reflected a buyer's assessment of the value of Tywell's assets after payment of liabilities. The purchase would not have been of the stock as a going concern fair market value. Tywell was a closely held corporation. The buyer of 390 shares of Tywell stock would not have obtained a controlling interest. Cardwell would have been the controlling shareholder.

A buyer would therefore not be able to assume that fees paid to affiliates would diminish. A buyer under this market analysis would have been looking at the value of the assets if sold

individually. A buyer of the stock would have been assessing what he could derive if the relationship with Cardwell did not succeed and the company had to be orderly liquidated. For a net asset value, the fees would not be included as liabilities to be paid. If the assets were sold, there would be no labor and service expenses incurred.

Tyler did not submit an exhibit with the year ending December 31, 2000, balance sheet. The sale would have occurred at the end of 2000. The commercial reasonable standard would be established at the end of 2000. The court cannot assess Hakala's net asset valuation without the year ending balance sheet that he adjusted.

The balance sheet for the year ending December 31, 2001, does not support Hakala's valuation. That balance sheet includes the rent receivable at $158,334. It values the Forney land and building at $642,027, which is more than the Kaufman County tax appraisal. There is no evidence of a fair market appraisal to support using a greater sum. The balance sheet includes equipment, vehicles, furniture, and fixtures, with depreciation. The balance sheet also lists the 25 acres at the purchase price, which is how Hakala would value that land. The balance sheet includes the debt against the land. It also includes a line of credit for operations. That particular line of credit may have been obtained after 2000, but the 1999 balance sheet reflects

similar debt. The 2001 balance sheet reflects equity of $452,619. Thus, at a fair asset valuation, the assets after liabilities would have likely brought that level of equity. At 50%, Tyler's interest would have been $226,309.50. At 39% his interest would have been $176,521.41.

On this record, the court cannot accord weight to Hakala's valuation to establish the value of the stock if Tyler forced a public or private sale. Tyler has consequently failed to establish a net asset value for the sale of the stock.

The court turns to the buyer in the construction business looking to invest in an established construction company that would secure employment income. Tyler and Cardwell each received distributions from the affiliates after payment of the marketing and management fees by Tyler. Cardwell testified that they received the payment for services rendered, not based on stock dividends. Tyler did not dispute that testimony. Beach, Tywell's financial officer, also testified that Tyler and Cardwell obtained income from Tywell through payments made to affiliated companies. He estimated that each received about $50,000 in 2000, with the rest of the fees used to pay for labor and services provided by the affiliated companies. Cardwell testified that his personal income from Tywell via the distributions to affiliated companies was $79,000. Tyler

testified his share should have been the same as Cardwell's share.

Tyler did not produce tax returns for earlier years to suggest a different figure for 2000. Tywell and/ or Tywell Construction had terminated Tyler's employment prior to the loan and stock pledge at issue.

An ordinary and prudent buyer would therefore anticipate providing construction services if he obtained an ownership interest in Tywell. Indeed, as the court infers from these circumstances, the likely buyer would be a person in the construction business looking to secure employment income from an established construction company. A buyer in December 2000, public or private, of Tyler's 390 shares, could anticipate receiving $79,000 provided he rendered services. The buyer would likely pay that amount to secure income for the following year with a prospect for continuing income in succeeding years. That amount would cover one half of Tywell's operating line of credit and would secure employment income.

However, on this record, the court has no basis to infer that such a buyer would pay a premium above that amount. It would not be prudent to pay a multiplier premium greater than one year's anticipated income, since the buyer could use greater funds to secure an ownership interest in a company he could control. As reflected by the year ending December 31, 2001,

balance sheet, $160,000 would cover the line of credit needed for Tywell's operations. Thus, a multiplier of two would result in a price of $160,000 cash. The buyer with that amount of cash would likely secure a credit facility and a down payment for an office building. The buyer would have no strong market reason to invest in a minority status with Tywell in that situation.

Since the court does not accord weight to Hakala's valuation and since the Tywell operation did directly lead to the $79,000 distribution to Cardwell, the court finds that a public or private sale would have likely derived $79,000.

Tyler owed Tywell $21,000. That amount plus expenses would have been paid from the sales proceeds. The resulting surplus would not have been more than $50,000. The court therefore finds that a forced sale in a commercially reasonable manner would have resulted in a $50,000 surplus for payment to Tyler.

Tyler has established damages of $50,000 under § 9.507(a).

Tywell's attorney offered to return the stock on the eve of the trial. Cardwell testified that he had not been aware of that offer. The offer comes too late. As analyzed above, the court determines the loss to Tyler resulting from, in effect, the failure to sell the stock at a public or private sale in December 2000. An offer to return the stock in July 2003 does not measure or address that loss.

Conversion

Tyler contends that Tywell converted the stock. Under Texas law, conversion is established by proving that: (1) plaintiff owned, had legal possession of, or was entitled to possession of the property, (2) defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights, and (3) defendant refused plaintiff's demand for return of the property. Russell v. Am. Real Estate Corp., 89 S.W.3d 204, 210 (Tex. App.-Corpus Christi, 2002, no pet.).

Tyler owned the stock but pledged it as collateral to Tywell. Tywell assumed and exercised dominion and control over the stock in an unlawful and unauthorized manner. As the court held in granting partial summary judgment, Tywell did not retain the stock in satisfaction of the debt in compliance with § 9.505(b) of the Tex. Bus. & Comm. Code. However, Tyler was not entitled to the return of the stock. As found above, Tyler was not in a position to redeem the stock. As discussed above, had Tywell acted consistently with applicable law, Tyler could have objected to Tywell's retention of the stock. That would have forced a public or private sale of the stock, but would not have entitled Tyler to the return of the stock. Tyler's rights are protected by damages under § 9.507(a). Lastly, Tyler never demanded the return of the property.

Consequently, Tyler has not established all the elements necessary for a conversion.

For purposes of complete fact findings, if an appellate court reversed on the conversion findings, this court would not award exemplary damages. Tywell acted on advice of counsel regarding the notice given under § 9.505(b). Tyler's employment with Tywell and Tywell Construction had been terminated prior to the loan transaction in question. That situation caused Tyler's economic distress. Tyler never demanded the return of the stock. Rather, he claims he tried to negotiate a resumption of his business relationships with Cardwell, conversations Cardwell denies having.

Fraudulent Conveyance Claims

Tyler seeks to avoid the stock transfer under 11 U.S.C. § 548(a)(1)(B) and Tex. Bus. & Comm. Code § 24.006.

Under § 548(a)(1)(B)of the code:

> (a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily--
> (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
> (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
> (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

11 U.S.C. § 548(a)(1)(B).

Section § 24.006 of the Tex. Bus. & Comm. Code reads:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Tex. Bus. & Com. Code Ann. § 24.006 (Vernon 2002).

The transfer occurred on December 21, 2000. That was the date Tywell retained the stock in satisfaction of the debt. Tywell argues that the transfer occurred on the date Tyler pledged the stock as collateral for the loan. Tyler does not attack that transfer. Rather, he attacks the transfer of the ownership of the stock in satisfaction of the debt. That transfer, albeit involuntary, is nevertheless subject to § 548(a)(1) and § 24.006 (b). See 11 U.S.C. § 101(54)(transfer means every mode, including involuntary, of parting with an interest in property).

Tyler filed his petition for relief under Chapter 13 of the Bankruptcy Code on December 4, 2001. The transfer therefore occurred within one year of the filing of the petition.

Tyler was insolvent at the time of the transfer. He was unemployed, and could not pay his debts as they became due.

As found above, the stock had a value of $79,000 to a person in the construction business. In exchange for the involuntary transfer of the stock, Tywell satisfied a $21,000 antecedent debt, plus interest and fees. Satisfaction of antecedent debt constitutes value. Nevertheless, retaining stock worth $79,000 to satisfy a $21,000 debt does not amount to reasonably equivalent value.

The Supreme Court has held that a foreclosure sale conducted consistently with state law yields reasonably equivalent value. BFP v. Resolution Trust Corp., 511 U.S. 531, 545 (1994). Tywell did not conduct this involuntary transfer consistently with state law. So the court does not presume that the retention of the stock in satisfaction of the debt results in reasonably equivalent value.

Tyler has therefore established the elements of a fraudulent conveyance, save one. But that one precludes recovery by Tyler. Tyler lacks standing to prosecute the claims. The claims belong to the Standing Chapter 13 Trustee. Section 548(a)(1) provides

that "the trustee" may avoid the transfer. Section 544(b)(1) likewise provides that "the trustee" may avoid a transfer avoidable by a creditor under state law. A Chapter 13 debtor does not have the powers of a trustee, except as provided under 11 U.S.C. § 1303. Section 1303 does not provide the debtor with the powers of a trustee under Chapter 5 of the Bankruptcy Code. The trustee or someone authorized to stand in the trustee's position pursuant to a provision of the Bankruptcy Code must therefore bring the avoidance action. Hartford Underwriters Ins. Co. v. Union Planters Bank N.A., 530 U.S. 1, 6 (2000). The Chapter 13 debtor cannot obtain a judgment pursuant to these avoidance provisions.

Other Issues

Tywell contends that Tyler could have prevented the loss of the stock and that Tyler was contributorily negligent. Those contentions constitute affirmative defenses. Tywell did not plead those affirmative defenses as mandated by Fed. R. Civ. P. 8(c), made applicable by Bankruptcy Rule 7008(a). Consequently, the court does not consider them.

Attorney's Fees

Tyler demands attorney's fees under 28 U.S.C. § 2201 et seq of the Declaratory Judgment Act and § 38.001 of the Texas Civil Practice and Remedies Code. The court may award reasonable and

necessary attorney's fees under 28 U.S.C. § 2201. Although styled initially as a declaratory judgment action, Tyler seeks and will obtain a money judgment for economic loss under § 9.507. As Tyler recovers a money judgment, not a declaratory judgment, the court declines to exercise its discretion to award attorney's fees under 28 U.S.C. § 2201. Instead, the court looks to whether Texas courts would award attorney's fees for a money judgment under § 9.507.

Section 38.001 of the Texas Civil Practice and Remedies Code does not apply absent a contract claim. Tyler has not obtained a judgment based on a contract. The Texas Supreme Court has held that attorney's fees are not allowed for an action under § 9.507. First City Bank-Farmers Branch, Texas v. Guex, 677 S.W.2d 25, 30 (Tex. 1984). Thus, Tyler's attorney's fees cannot be recovered.

Order

Based on the foregoing,

IT IS ORDERED that Arthur Franklin Tyler, Jr., shall recover a judgment of $50,000 from Tywell Manufacturing Corporation, with pre-judgment interest of 1.51 % from November 6, 2002, the date of the filing of the complaint, to the entry of the judgment, and post-judgment interest at the then applicable federal rate.

IT IS FURTHER ORDERED that all other claims for recovery are **DISMISSED.**

IT IS FURTHER ORDERED that the judgment constitutes property of the bankruptcy estate of Arthur Franklin Tyler, Jr., subject to the provisions of Chapter 13 of the Bankruptcy Code.

Counsel for Tyler shall submit a proposed final judgment consistent with this order.

Signed this 5th day of August, 2003.

Steven A. Felsenthal
United States Bankruptcy Judge